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14 Counterdefendant ASETEK USA, INC.

15 **UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

16 ASETEK DANMARK A/S,  
17 Plaintiff and  
18 Counterdefendant,  
19 ASETEK USA, INC.,  
20 Counterdefendant,  
21 v.  
22 COOLIT SYSTEMS, INC.,  
23 Defendant and  
24 Counterclaimant,  
25 COOLIT SYSTEMS USA INC., COOLIT  
26 SYSTEMS ASIA PACIFIC LIMITED,  
COOLIT SYSTEMS (SHENZHEN) CO.,  
LTD.,  
Defendants,  
CORSAIR GAMING, INC. and CORSAIR  
MEMORY, INC.,  
Defendants.

CASE NO. 3:19-cv-00410-EMC

**DECLARATION OF ROBERT McCUALEY  
IN SUPPORT OF ASETEK DANMARK A/S  
OPPOSITION TO DEFENDANTS'  
MOTION TO STRIKE ASETEK'S LATE-  
DISCLOSED ALLEGED DESIGN-  
AROUNDS**

Date: May 5, 2022  
Time: 1:30 PM  
Location: Courtroom 5, 17<sup>th</sup> Floor  
Judge: Hon. Edward M. Chen

1 I, Robert McCauley, declare as follows:

2 1. I am an attorney licensed to practice before this Court and all courts of the State of  
3 California, and am a Partner with Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, counsel  
4 for Plaintiff and Counterdefendant Asetek Danmark A/S (“Asetek”) in the above-entitled action. I  
5 submit this declaration in support of Asetek’s Opposition to Defendants’ Motion to Strike Asetek’s  
6 Late-Disclosed Alleged Design-Arounds. The matters stated herein are based upon my personal  
7 knowledge, and if called as a witness, would testify as to the following statements.

8 **IDENTIFICATION OF EXHIBITS**

9 2. Attached here to as **Exhibit A** is a true and correct copy of a prior art reference  
10 entitled “*High Flux Heat Removal with Microchannels – A Roadmap of Challenges and*  
11 *Opportunities*” by Satish G. Kandlikar, published in *Heat Transfer Engineering* (vol. 26, no. 8,  
12 2005).

13 3. Attached here to as **Exhibit B** is a true and correct copy of an expert report of Dr.  
14 Himanshu Pokharna, CoolIT’s expert in this matter.

15 4. Attached here to as **Exhibit C** is a true and correct copy of an expert report of Dr.  
16 Himanshu Pokharna, CoolIT’s expert in this matter.

17 5. Attached here to as **Exhibit D** is a true and correct copy of an appendix to CoolIT’s  
18 expert rebuttal report on validity.

19 6. Attached here to as **Exhibit E** is a true and correct copy of the January 12, 2022  
20 deposition of Dr. Carl-Fredrik Stein, Asetek’s expert in this matter.

21 7. Attached here to as **Exhibit F** is a true and correct copy of the January 10, 2022  
22 deposition of Dr. Himanshu Pokharna, CoolIT’s expert in this matter.

23 8. Attached here to as **Exhibit G** is a true and correct copy of email exchange between  
24 Robert McCauley, counsel for Asetek, and Reuben Chen, counsel for CoolIT.

25 9. Attached here to as **Exhibit H** is a true and correct copy of a declaration of Dr. Andre  
26 Eriksen, Asetek’s expert in this matter.

## RELEVANT FACTS CITED IN ASOTEK'S MOTION

10. Without any request for more information from CoolIT, Asetek served a second supplemental response to Interrogatory No. 15 during fact discovery (on August 20, 2021) in which Asetek identified additional 2D CAD drawings that showed top, side, and bottom views of Asetek's redesign pursuant to Rule 33(d).

11. CoolIT's counsel never complained during fact or expert discovery that they did not understand the 2D CAD drawings of Asetek's redesign produced during fact discovery, or that they needed 3D CADs or any other additional information to understand Asetek's redesign. CoolIT' counsel marked and used these same 2D CAD drawings as deposition Exhibits 185 and 186 when they deposed Asetek's Rule 30(b)(6) witness on its redesign, Asetek's CEO and inventor, Andre Eriksen.

12. In the window between Mr. Eriksen's deposition and the close of fact discovery, Asetek also identified some simple modifications to the gasket (which sits on top of the cold plate) that would also prevent any argument of infringement of some, but not all, of the CoolIT's asserted claims, which were also disclosed Asetek's supplemental response to Interrogatory No. 3 served on August 31, 2021.

13. Asetek's CADs for its gasket redesigns were provided to Defendants on December 8, 2021.

14. CoolIT's counsel never complained that they did not understand Asetek's redesigns or supplemental responses to Interrogatory Nos. 3 or 15 during fact or expert discovery, nor did they claim that they needed any additional documents or CADs to understand them.

15. Dr. Stein used 3D CAD files of Asetek's redesign to perform his simulations, and these 3D CAD files were sent to Defendants' counsel simultaneously with Dr. Stein's report on December 8, 2021, the date for rebuttal reports.

16. Asetek advised that production validation samples of Asetek's redesign were made and available for shipment from Asetek's contract manufacturer no earlier than January 26, 2022. Asetek's counsel learned of this about two weeks later, and on February 15, 2022, Asetek's counsel

1 offered to hand deliver samples to Defendants' counsel's office or make them available for pick up  
 2 at Asetek's counsel's office (at their option).

3       17. Early in the case, when Asetek's counsel did not understand vague mappings and  
 4 annotations in CoolIT's infringement contentions, they requested a meeting to discuss the  
 5 annotations. At that meeting, CoolIT's attorneys better explained their annotations and positions,  
 6 and the issues were resolved without any need for motion practice.

7       18. CoolIT did not produce a manufactured product sample of their Tamriel redesign  
 8 until more than one month after close of fact discovery.

9       19. CoolIT did not provide Asetek with manufactured product samples of its Tamriel  
 10 redesign until October 2021, more than one month after the fact discovery cutoff.

11       20. Asetek's 2D and 3D CAD drawings and physical samples of its redesign all  
 12 implement the two microchannel array configuration disclosed in Kandlikar Figure 7(b), and the 3D  
 13 CADs and physical samples are not materially different from the 2D CADs disclosure during fact  
 14 discovery.

15       21. After Asetek's expert Dr. Stein produced his opening expert report regarding pump  
 16 impeller designs on September 16, 2021, Defendants counsel contacted Asetek's counsel and  
 17 insisted that Asetek produce the CADs and simulation files that Dr. Stein used for his analyses.  
 18 Counsel for the parties met and conferred, agreed upon parameters, Asetek's counsel provided those  
 19 files, and Defendants' expert Dr. Abraham used those files for purposes of preparing his rebuttal  
 20 expert report.

21       I declare under penalty of perjury under the laws of the United States for the forgoing is true  
 22 and correct. Executed this 14th day of April 2022, at Palo Alto, California

23  
 24 By: /s/ Robert McCauley

25                   Robert McCauley  
 26                   Attorneys for Plaintiff and Counterdefendant  
 27                   ASETEK DANMARK A/S and  
 28                   Counterdefendant ASETEK USA, INC.